

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SHAHRIAR S.,

Claimant,

and

WESTSIDE REGIONAL CENTER,
Service Agency.

OAH No. L 2006100685

DECISION

This matter came on for regularly scheduled hearing on November 27, 2006, at Culver City, California, before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California. The Westside Regional Center (Service Agency) was represented by Lisa Basiri, Fair Hearing Coordinator. Claimant Shahriar S. was represented by his mother, Mitra V.¹

Evidence was received by documents and testimony. The record was kept open for receipt of further documents. On December 5, 2006, Claimant's mother submitted a letter and two invoices, marked and received in evidence as Exhibit E. On December 7, 2006, the Service Agency submitted a letter, marked and received in evidence as Exhibit 5. The matter was submitted for decision on December 7, 2006.

ISSUES

The parties agreed that the following issues are to be resolved:

1. Should the Service Agency fund services for Claimant by Dr. Laura Meyers, an Augmented Language Development Specialist?
2. Should the Service Agency reimburse Claimant for purchase of a laptop computer and the Classroom Suite computer program?
3. Should the Service Agency reimburse Claimant for prior services by Dr. Laura Meyers?

¹ Claimant and his mother are referred to in this way to protect their confidentiality.

FACTUAL FINDINGS

The Administrative Law Judge finds the following facts:

Jurisdiction

1. Claimant was born May 27, 1993, and is thirteen and one-half years old. Claimant is eligible for services from the Service Agency based on his diagnosis of autism.

2. At a time not established by the evidence, Claimant's mother requested that the Service Agency fund augmented speech therapy by Dr. Laura Meyers, reimburse for services by Dr. Meyers, and reimburse for a computer and software program. In a letter dated September 6, 2006, the Service Agency denied the request. (Exhibit 1.)

3. Claimant's mother submitted a Fair Hearing Request dated September 19, 2006 (Exhibit 1), resulting in this hearing.

Background

4. Claimant began receiving services from the Service Agency in December 1996. His most recent Individual Program Plan (IPP), dated May 31, 2006 (Exhibit 3), provides the following relevant information. The services provided by the Service Agency include in-home respite (13 hours per week), assistance for the family by an educational advocate to interact with Claimant's school district and the process whereby his Individual Education Plan (IEP) is prepared and implemented, a behavior intervention program (91 hours per month by IABA), specialized supervision (84 hours per month), extended school year services and coverage for LAUSD minimum days, transportation to a social program (two days per week), a social/gym program (two times per week), and parent voucher to reimburse for diapers. There was no evidence if Claimant's parents signed the IPP indicating agreement with it. Claimant also receives services from the Los Angeles Unified School District (LAUSD), by attending the Sunrise Program (a non-public school), a one-to-one behavioral aide, speech therapy, occupational therapy, and sensory integration therapy.

5. Claimant's behaviors include some violent and hostile episodes, including self-injurious instances; running away; tantrums that may require restraint; the need for close supervision in social situations and due to lack of safety awareness; and lack of cooperation. The most recent report from IABA, dated June 10, 2006 (Exhibit 3), shows that, with much attention from the staff, Claimant's episodes of negative behavior have been reduced, however they continue to occur regularly. Claimant is largely non-verbal. IABA is trying to increase Claimant's use of the picture exchange cards system (PECS) to promote communication and reduce frustration. At school, he uses a Chatbox device. There was no evidence of the nature

of the Chatbox device.

6. The Service Agency submitted a portion of a report prepared by LAUSD dated March 21, 2006 (Exhibit 4), comprised of an occupational therapy assessment relating to Claimant's motor abilities. It notes that the frequency of Claimant's injurious behaviors is reduced. Claimant uses a communication book containing pictures that can be pulled off of a Velcro strip. It notes that Claimant has access to a computer in his class and is able to type his first name.

7. Claimant's mother became aware of Laura Meyers, Ph.D., and the computer software program at a workshop in April 2006. Dr. Meyers was retained and provided augmented language sessions beginning in June 2006. Dr. Meyers issued a report dated October 26, 2006 (Exhibit 2), describing some of the sessions and the communication by Claimant using the computer and software program. Claimant learned to use the computer and software program for basic communication. This also appears to positively affect his behavior. Dr. Meyers recommends weekly sessions for one year, and writes that she has charged \$125 per session; that her rate as a vendor of the Service Agency has been \$80 per hour since 1992; and that she intends to negotiate a new billing rate with the Service Agency.

8. In a report of a session which took place October 26, 2006 (Exhibit A), Dr. Meyers listed 16 sentences written by Claimant in a 25 minute period. Among other things, Claimant wrote: "I am working with you." "You are my teacher." "We are a pleasing friendship." "I want to ask to go swimming." "To write is to love." Dr. Meyers wrote that Claimant becomes calmer when he writes. Although Claimant was combative at the beginning of the session and needed to be restrained, the destructive behaviors were reduced during their session and Claimant was smiling and laughing by the end.

9. Claimant's mother submitted bills from Dr. Meyers for one-hour sessions, at the rate of \$125 per hour, for these dates in 2006: June 27, July 8 and 22, August 1, 5, 12, 19 and 26, September 2, October 28, and November 18 and 25. Dr. Meyers also billed for one hour each for preparation of the two reports. The cost of 12 sessions and 2 reports is \$1,725. (Exhibits C and E.)

10. Claimant's mother purchased a laptop computer on August 25, 2006, for \$1,449, not including recycling fee (\$6) and tax. (Exhibit D.) She purchased the Classroom Suite software program on November 2, 2006, for a total price, including shipping and tax, of \$114.25. (Exhibit E.)

11. Claimant's mother testified that she spoke often with her service coordinator, Harry Brown, and her educational advocate, Ron Lopez, about her desire for the services of Dr. Meyer and the computer and software, before she purchased the computer and software. She was aware of Claimant's use of the PECS and the Chatbox at school, but stated that Claimant does

not use these at home or in the community. She is aware that the service coordinator must take requests like these to a committee to seek approval and authorization before the item or service can be purchased. However, as time went on, she was not informed of any approval and asked Harry Brown to take the request to the committee. Later, Mr. Brown informed her that the committee did not approve the request.

12. Claimant submitted a letter from his doctor, Susan Schmidt-Lackner, M.D., dated November 9, 2006 (Exhibit B), which acknowledges the advances to Claimant's expressive communication via the facilitated communication with Dr. Meyers and the computer and software program, notes Claimant's need to communicate at home and in the community as well as in school, and her opinion that, with effective communication, Claimant's behavioral disturbance will cease. She states: "Although facilitated communication is not a scientifically validated method, it is my strong recommendation that [Claimant] continue with this mode of intervention."

13. The Service Agency denied Claimant's requests, and issued a letter dated November 16, 2006 (Exhibit 2), detailing its reasons. First, the Service Agency contends that the initial source of funding for this service should be LAUSD, and notes that LAUSD, at that time, was in the process of assessing Claimant for and upgrade in his augmentative communication needs. Further, the Service Agency contends that there was no request for these services to be authorized before they were incurred, specifically citing to a review of the file and consultation with Mr. Brown, the service coordinator for Claimant. It noted no reference to the services in the IPP from May 2006 and no knowledge of Dr. Meyers' services until August 30, 2006. The Service Agency suggested that, after the process with LAUSD had been completed, Claimant could request any further needed services from the Service Agency.

14. In its letter dated December 7, 2006 (Exhibit 5), the Service Agency noted that Dr. Meyers was an approved vendor and that her rate was increased as of July 1, 2006, to the maximum allowable, \$82.40.

15. The Service Agency has written guidelines for provision of services. In summary, the general standards (Exhibit 2) track many of the goals of the law governing services to disabled citizens who are eligible to receive them. They further state that purchase decisions give consideration to levels of need, effectiveness and cost-efficiency of services, maximizing use of generic services, and fulfillment of family responsibilities. It stresses use of the IPP process for team planning, encourages family to suggest possible services to the IPP team, and states that the Service Agency will purchase only those services that are identified in the planning process. It also stresses the identification and use of generic resources to locate and provide needed services.

16. There was no testimony from Mr. Brown or Mr. Lopez about any of their interaction with Claimant's mother concerning these services and supports, nor did either side submit the interdisciplinary notes wherein many Service Agency employees note the actions

and communications related to coordination of services for consumers of the Service Agency.

CONCLUSIONS OF LAW AND DISCUSSION

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following conclusions of law and determination of issues:

1. Throughout the applicable statutes and regulations (Welfare & Institutions Code sections 4700 - 4716, and California Code of Regulations, title 17, sections 50900 - 50964),² the state level fair hearing is referred to as an appeal of the regional center's decision. Particularly in this instance, where Claimant seeks to obtain higher levels of services than are presently being provided, Claimant has the burden of proof to establish that he is entitled to the levels of services he seeks.

2. (A) In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process that results in an IPP designed to promote as normal a life as possible. (Code § 4646; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs), contain a statement of time-limited objectives for improving the client's situation, and reflect the client's particular desires and preferences. (Code §§ 4646; 4646.5, subds. (a)(1), (a)(2) and (a)(4); 4512, subd. (b); and 4648, subd. (a)(6)(E).)

(B) The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question and, within the bounds of the law, each consumer's particular needs must be met. (See, e.g., Code §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4512, subd. (b), 4640.7, subd. (a), 4646, subd. (a), 4646, subd. (b), 4648, subd. (a)(1) & (a)(2).) The Lanterman Act assigns a priority to services that will maximize the consumer's participation in the community. (Code §§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

3. Section 4512, subdivision (b), of the Lanterman Act states in part:

“Services and supports for person with developmental disabilities’ means specialized service and supports or special adaptations of generic services and support directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or

² All statutory references are to the Welfare and Institutions Code, except where indicated.

toward the achievement and maintenance of independent, productive, normal lives. . . . The determination of which services and supports are necessary shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of . . . the consumer's family, and shall include consideration of . . . the effectiveness of each option of meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, . . . occupational and speech therapy, . . . adaptive equipment and supplies”

4. (A) Services provided must be cost effective (Code § 4512, subd. (b)), and the Lanterman Act requires the regional centers to control costs as far as possible and to otherwise conserve resources that must be shared by many consumers. (See, e.g., Code §§ 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.) A fair reading of the law is that a regional center is not required to meet a consumer's every possible need or desire, in part because it is obligated to meet the needs of many children and families.

(B) One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (Code § 4630, subd. (b)); to find innovative and economical ways to achieve the goals in an IPP (Code § 4651); and to utilize innovative service-delivery mechanisms (Code §§ 4685, subd. (c)(3), and 4791). Section 4690 requires the Department of Developmental Services to establish an equitable process to set rates for payment for such services in a manner that assures their high quality.

5. Under Code section 4648, subdivision (a)(8), the regional centers shall not use their funds for services for which another generic resource, such as a school district, is required to pay. In rendering services of education and training for autistic persons over the age of three years, it is the primary responsibility of the school district to use its available funds for such purpose, with ultimate responsibility for any unmet needs to be funded by the Service Agency (section 4648, subdivision (f) of the Lanterman Act; and compare federal law in the Individuals in Education Act (IDEA), 20 U.S.C. section 602(8) and (22), with Lanterman Act sections 4512, subdivision (b), 4648, subdivision (a)(8) and 4648, subdivision (f)).

6. Reimbursement is not expressly addressed in the Lanterman Act, except for circumstances not applicable to this case. (See Code section 4648, subdivision (a)(3)(B).) However, if the services requested are encompassed within the Act and it is necessary to pay amounts beyond what was provided by the Service Agency to obtain those services, reimbursement should be considered, based on the reasoning of the *Association of Retarded Citizens, supra*, 38 Cal.3d 384, which found that required services should be provided at state expense.

7. Consideration of justice, notice and fair play dictate that Claimant may only recover

for items that he has previously asked the Service Agency to pay. The fair hearing process operates for review of decisions made by a regional center, and is not the appropriate forum in which to raise a service request that has not been already received and reviewed by, or at least made known to, the regional center.

8. (A) Any hearing is limited by the nature of the evidence that was submitted. In the present case, Claimant claims to have made earlier requests for the specific services at issue, and yet there was an absence of any confirming evidence; that is, no testimony from the two people who she says she spoke with and no notes of such discussions. On this state of the evidence, it cannot be concluded that Claimant attempted to use the IPP process to seek prior authorization. By the time the Service claims it became aware of the service by Dr. Meyers, she had already had eight sessions with Claimant, at considerable expense. Also, the Service Agency would want to consider the nature of the services provided, which are characterized by Dr. Schmidt-Lackner as “not scientifically validated.”

(B) Further, there was no evidence of the outcome of Claimant’s request for additional communication services from LAUSD, a generic resource that has primary responsibility for educational services. The Service Agency is prohibited from paying for services that are required to be provided by a generic resource such as a school district.

(C) The evidence produced in this hearing was not sufficient to establish that Claimant presently qualifies to receive these services and supports from the Service Agency. See Factual Findings 4, 5, 7, 8, 11, 12, 13, 15 and 16.

9. At this time, Claimant has not established that the Service Agency has improperly applied its policies or violated the applicable statutes. However, if Claimant is unable to obtain additional services and supports from the school district, and the Service Agency is allowed to participate in the planning for such services through the IPP process, in the future Claimant may attempt to establish that he qualifies for such services and supports.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Claimant’s appeal of the Service Agency’s determination to deny reimbursement for services by Dr. Laura Meyers, payment for ongoing services by, and reimbursement for a computer and software program is denied.

DATED: December 26, 2006.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

Notice: This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.